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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 13

FEDERAL HOUSING ADMINISTRATION, APPELLANT

v.

THE DARLINGTON, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The opinion of the three-judge district court, entered July 13, 1957 (R. 127–130), is reported at 154 F. Supp. 411. The prior opinion of District Judge Hoffman, dated June 20, 1956, incorporated by reference in the opinion of the three-judge court (R. 101–121), is reported at 142 F. Supp. 341. Other earlier opinions in this litigation are reported at 352 U. S. 977 and 134 F. Supp. 337.

JURISDICTION

This suit, brought by appellee under the National Housing Act, as amended, and under 28 U. S. C. 2201–2202, asks for declaratory and injunctive relief

determining that, notwithstanding Section 513 of the Act, added in 1954, 68 Stat. 610, 12 U. S. C. (Supp. V) 1731b, appellee has the right to rent apartments in its building for terms of less than thirty days. The complaint alleged that application of the 1954 Act to appellee would be unconstitutional, and the three-judge court so held (R. 127–130). The judgment (R. 130–132) was entered on September 4, 1957, and the Federal Housing Administration filed its notice of appeal on October 2, 1957 (R. 132–133). This Court noted probable jurisdiction on January 27, 1958. 355 U. S. 929; R. 133.

The jurisdiction of this Court to review the judgment of the three-judge district court on direct appeal is conferred by 28 U. S. C. 1253 and is sustained by the following cases: *Swift & Co.* v. *United States,* 343 U. S. 373, 376, and *United States* v. *Great Northern R. Co.,* 343 U. S. 562, 567–568.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes, *viz,* Sections 608 and 513 of the National Housing Act, as amended (56 Stat. 303, 12 U. S. C. 1743, and 68 Stat. 610, 12 U. S. C. (Supp. V) 1731b), and regulations, *viz,* portions of 24 C. F. R. 280, are set forth in Appendix A, *infra,* pp. 47–51, and Appendix B, *infra,* pp. 52–57.

QUESTIONS PRESENTED

By insuring a mortgage, appellant Federal Housing Administration enabled appellee to finance and construct a building in 1949. This insurance took place pursuant to legislation which aimed to promote the construction of residential rental housing, first

for war workers, later for returning veterans. The regulations issued under the statute required that the insured project be designed principally for residential use. In its charter, appellee undertook to restrict itself to the business of operating a rental housing project. After the completion of the project, appellee rented some of its apartments as furnished overnight accommodations for transients. The Housing Act of 1954 explicitly prohibited such rentals, regardless of whether the Administration committed itself to insure the mortgage before or after the passage of that Act.

A district court of three judges held that the Housing Act of 1954 was unconstitutional to the extent that it prohibited rental to transients in projects theretofore approved by appellant, and ruled that appellant had no right to prohibit such rental.

The questions presented are:

1. Whether appellee's rental of apartments to transients was prohibited prior to the Housing Act of 1954, in view of the purpose of the earlier legislation and the nature of appellee's undertaking to limit its business to a rental housing project consisting of dwelling units.

2. Whether the explicit prohibition of the 1954 Act was beyond the power of Congress, as applied to a project theretofore approved.

STATEMENT

Appellee is the owner of an apartment house located in the City of Charleston, South Carolina. In order to finance construction of this building, it applied for

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and obtained Federal Housing Administration mortgage insurance under Section 608 of the National Housing Act. This litigation involves appellee's right to rent[1] apartment to transients, *i. e.*, to rent for periods of less than thirty days.

1. The statutory and regulatory background

(a) Section 608 (b) (2) of the National Housing Act, 56 Stat. 303, 12 U. S. C. 1743, as amended by Section 10 of the Veterans' Emergency Housing Act of 1946, 60 Stat. 207, 214, authorized[2] the Commissioner of the Federal Housing Administration to insure mortgages covering housing projects in which preference for occupancy was afforded World War II veterans and their immediate families.[3] The principal obligation of the mortgage could not exceed ninety per cent of the replacement cost of the mortgaged property (Sec. 608 (b) (3) (B)), nor exceed $5,000,000 (Sec. 608 (b) (3) (A)). The Commissioner was empowered to regulate the mortgagor's rents, charges, capital structure, rate of return or methods of operation either by contract or by acquiring a stock interest in the mortgagor (Sec. 608 (b) (1)).

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[1] The words "rent" and "rental" will be used in this brief to apply to the relationship between appellee and occupants of appellee's apartments, whether those occupants are long-term tenants or simply transients.

[2] The authority to insure mortgages under Section 608 has been withdrawn as to all applications received after March 1, 1950, 63 Stat. 905, 64 Stat. 57.

[3] Preference was also given to "hardship cases as defined by the Commissioner" (Sec. 608 (b) (2)).

The Commissioner was also directed to promulgate regulations necessary for carrying out Section 608 (Sec. 607). Under this authority, he issued regulations (24 C. F. R. 280[4]) which, at the time that appellee's mortgage was insured, provided the following: The mortgagor had to be a corporation or trust formed, with the Commissioner's approval, for the purpose of providing housing for rent or sale, and, until the mortgage insurance terminated, subject to the Commissioner's regulation of rents, charges, capital structure or methods of operation (24 C. F. R. 280.26 (a)). So long as the mortgage insurance remained in effect, the mortgagor was permitted to "engage in no business other than the construction and operation of a rental housing project or projects" (24 C. F. R. 280.26 (a)). In order to regulate the mortgagor, the Commissioner was to receive "certain shares of [the mortgagor's] special stock" which would confer majority voting rights in the event of default under the mortgage, charter or any other agreement between the mortgagor and the Commissioner (24 C. F. R. 280.29). When the Commissioner's obligation under the contract of mortgage insurance terminated, his right to regulate the mortgagor also was to terminate (24 C. F. R. 280.29).

At the time the Commissioner insured the mortgage, the mortgagor had to have completed, or to have become obligated to construct and complete, new housing accommodations designed principally for

[4] This was originally designated 24 C. F. R. 580. It was renumbered 24 C. F. R. 280 on December 23, 1948, 13 F. R. 8260.

residential use, and consisting of not less than eight rentable dwelling units (24 C. F. R. 280.34). Veterans and their immediate families had to be given preference in the renting of the apartments, and the mortgagor could not discriminate against families with children (24 C. F. R. 280.24). The rentals could not exceed those reflected in a rental schedule filed with the Commissioner and approved by him prior to the opening of the project, and could not be changed without the Commissioner's approval (24 C. F. R. 280.30 (a)). The established maximum rental was to be the "maximum authorized charge against any tenant for the accommodations offered" and any additional charge was subject to the Commissioner's approval (24 C. F. R. 280.30 (b)).

(b) During hearings before the Banking and Currency Committees of the House of Representatives and the Senate preceding the passage of the Housing Act of 1954 (68 Stat. 590), representatives of the hotel industry complained that many Section 608 rental housing projects were taking in transients in competition with hotels.[5] Both committees agreed that this complaint was justified. Since the FHA rental housing insurance program was "designed to provide rental accommodations for family use", not hotel accommodations, the House Committee concluded that "[t]he fact that a project has been insured should * * * be a prohibition to rental on a tran-

[5] Hearings before the Committee on Banking and Currency, House of Representatives, 83rd Cong., 2d Sess., on H. R. 7839, pp. 507–515; Hearings before the Committee on Banking and Currency, Senate, 83rd Cong., 2d Sess., on S. 2889, 2938, 2949, pp. 654–661.

sient basis." H. Rept. No. 1429, 83rd Cong., 2d Sess., p. 17. Believing that remedial legislation was unnecessary, the House Committee called upon the FHA to "take firm action to obtain full compliance with such contracts [*sic*] as have been imposed for this purpose in those contracts, making such investigation and taking such other enforcement action as may be required". *Id.* at p. 18.

Although the Senate Committee likewise concluded that the purpose of federal housing insurance was "to increase the supply of permanent residential housing, not to increase the supply of hotels or motels or similar establishments catering to nonpermanent residents", it felt it was desirable "to clarify the intent of the Congress" by expressly prohibiting transient occupancy. S. Rept. No. 1472, 83rd Cong., 2d Sess., p. 31. In conference, the House managers agreed to express the legislative intent in specific legislation (H. Rept. No. 2271, 83rd Cong., 2d Sess., pp. 77–78).

As finally enacted, Section 132 of the Housing Act of 1954 (68 Stat. 610) added a new Section 513 (12 U. S. C. 1731b) to the National Housing Act. Subsection (a) contains the Congressional declaration that, since the enactment of the National Housing Act, it has been the legislative purpose "that housing built with the aid of mortgages insured under that Act is to be used principally for residential use; and that this intent excludes the use of such housing for transient or hotel purposes while such insurance on the mortgage remains outstanding". Subsection (b) provides that "no new, existing, or rehabilitated multifamily housing" subject to an FHA insured mortgage may be

operated for transient or hotel purposes unless such use was expressly authorized by the Federal Housing Commissioner prior to May 29, 1954, or the building is in an area designated by the Commissioner as a resort area and, prior to May 28, 1954, was used for transient purposes. In either case, however, the number of transient accommodations which may be made available cannot exceed the number that was available on May 28, 1954. Subsections (d), (f) and (g) direct the Commissioner to "enforce the provisions of this section [Section 513] by all appropriate means at his disposal" including, after proper investigation, an order that violations cease immediately and, if that order is not obeyed, a reference of the matter to the Attorney General for appropriate civil or criminal proceedings.* Under subsection (h), the Attorney General may obtain injunctive relief against existing or imminent violations of the Act. Subsection (i) grants the same remedy to any person owning or operating a hotel within fifty miles of the place where the violation occurs or is about to occur.

2. The facts underlying this litigation

Appellee Darlington is a corporation chartered under the laws of South Carolina (R. 102). It was formed on December 7, 1949 (Pl. Ex. 19, R. 43, 184) for the purpose, *inter alia,* of obtaining Federal Housing Administration insurance of a mortgage (Pl. Ex. 19, R. 43, 185) covering a twelve-story apartment house which was to be constructed in Charleston,

*Subsection (d) expressly excepts from criminal penalty any violation occurring prior to September 3, 1954.

South Carolina (R. 102). It was capitalized with 1,999 shares of $100.00 par common stock, of which the Long Corporation held all but three shares, and 100 shares of $100 par preferred stock which were held entirely by the Federal Housing Administration (R. 106).

Under the terms of its charter, appellee is prohibited from engaging in any business "other than the construction and operation of a rental housing project or projects" so long as any of its property is subject to a mortgage insured by the Federal Housing Commissioner (R. 103). It is also prohibited from renting its "dwelling accommodations" for periods of more than three years, or at a "maximum average rental per room per month" higher than approved by the Federal Housing Administration (R. 104).[7] In addition, without Administration approval, it may not "require as a condition to the occupancy or leasing of any unit in the project the payment * * * of any amount other than the payment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease" (Pl. Ex. 19, R. 43, 187). Moreover, without Administration approval, appellee may not charge tenants additional amounts for furnishing facilities or services not included in their leases (R. 104–105).

The charter also provides that it shall constitute a default by appellee if, for fifteen days, it fails to per-

[7] This and all other powers afforded the Administration under appellee's charter result from the Administration's ownership of appellee's preferred stock.

form any of the required "conditions or provisions" of the charter, the corporate by-laws, the mortgage or any contract between the mortgagor and the Commissioner of the Federal Housing Administration (R. 104). In case of default, the Administration may "remove all existing directors of the corporation, and * * * elect new directors in their stead; provided, however, that one of said directors shall be the owner or holder of one or more shares of common stock". When the default is cured, the holders of the common stock may once again elect directors (Pl. Ex. 19, R. 43, 186).

On December 7, 1949, appellee executed, in favor of the Echo Fire and Title Insurance Company, on standard Federal Housing Administration forms, a promissory note for $1,357,700 secured by a mortgage on the apartment building. (R. 3–4).[8] The mortgage was initially endorsed by the Federal Housing Administration for insurance purposes on December 30, 1949, subject to "Section 608 of the National Housing Act and Regulations thereunder of the Federal Housing Commissioner" in effect on that date (R. 106–107). It was again endorsed, after the completion of the apartment building, on September 12, 1951 (R. 72).

The apartment building was completed in July, 1951 (R. 107) and, on September 10, 1951, appellee submitted to the Federal Housing Administration a proposed schedule of monthly rents for each of five

[8] The court below noted that "[i]t has been stated that the total cost of the building was $1,550,920.11 which, when added to the land value, makes a total project cost of $1,675,920.11" (R. 103).

different types of apartments. There was no indication that any of the apartments would be furnished (Pl. Ex. 24–A, R. 43, 193–194). The schedule was approved by the Administration on September 13, 1951 (R. 107).

Starting on October 9, 1951, and without seeking to obtain the Administration's approval, the Long Corporation, holder of 1996 of appellee's 1999 shares of common stock, furnished a number of appellee's apartments at a cost of $850–$900 per apartment (R. 67, 107, 108). Tenants of these furnished apartments were charged approximately fifteen to twenty dollars per month, payable to the Long Corporation, in addition to the schedule-approved apartment rentals (R. 56).

In February, 1952, again without applying to the Administration for permission, appellee began offering furnished efficiency apartments to transients on a daily basis, at six dollars per day (R. 56, 62, 107–108), more than half of which was paid to the Long Corporation for "furniture rental" (R. 64). In other words, the Long Corporation received "about $90 a month" from transient rental of a furnished efficiency apartment, if occupied for substantially the entire month, whereas it received only fifteen to twenty dollars a month from a permanent tenant of a similar apartment (R. 56).

On April 1, 1952, appellee submitted to the Federal Housing Administration a Rental Housing Occupancy Report, required of all Section 608 mortgagors. The instructions printed on the form required that, in a

column entitled "total units completed", "[f]urnished units, if any, for each size and rental rate should be designated by an 'F' * * * after the number of such units". Although a number of apartments had been furnished for approximately six months, there was no showing of this in the report. Similarly, there was no indication that apartments were being rented on a daily basis. (Def. Ex. 4b.)

On January 4, 1955, the Federal Housing Administration, having learned of appellee's practice of transient rentals, notified appellee that, while it could continue leasing furnished apartments if it submitted an acceptable schedule of furniture rentals, transient occupancy must be discontinued (R. 16–17, 109).* Although appellee replied that it was "desirous of cooperating with your Administration in every reasonable way", it declined to sign a statement requesting permission to rent furnished apartments and agreeing not to offer any apartments for occupancy of less than thirty days (R. 17–19, 109). Appellee also asked to be advised of the legal authority prohibiting it from offering apartments on a transient basis (R. 18, 109). On January 18, 1955, the Federal Housing Administration informed appellee that Section 513 of the Housing Act of 1954 expressly prohibits 'tran-

* In December, 1952, the Administration, after learning that appellee was renting furnished apartments, had requested that it submit a rent schedule making full disclosure and sign an agreement not to rent to transients. Appellee did not comply and the matter was not pursued. Apparently the Administration did not then know that appellee, for almost a year, had been making furnished apartments available to transients. (R. 108.)

sient occupancy of apartments in Section 608 housing projects (R. 19–21, 109). However, the Administration again suggested that there would be no objection to appellee's continued leasing of furnished apartments, other than for transient occupancy, provided the furniture rentals were reasonable and appellee agreed not to offer apartments for periods of less than thirty days (R. 20, 109).

3. The proceedings below

In its amended complaint, filed March 10, 1955 (R. 1–21), appellee sought a declaratory judgment that, so long as apartments are available for extended tenacies and the building is operated principally for residential use, it may continue to offer furnished apartments for transient occupancy if "it complies with the terms of the Housing Act in existence at the time of its incorporation, construction of its said building and insurance of the mortgage on the building by the [Administration]". In addition, an order was sought directing the Administration to cease "interfer[ing] with and hampering and hindering of the plaintiff's rightful operation of its apartment project" (R. 15).

The gravamen of the complaint was that appellee had a right, prior to the enactment of the Housing Act of 1954, to rent its apartments for periods of less than thirty days (R. 9) and that Congress, by the 1954 Act, could not constitutionally deprive it of that right (R. 9). Appellee also asserted that the 1954 Act is inapplicable to it, and is discriminatory, arbitrary, unjust and inequitable in view of the provisions (a) authorizing rentals to transients in areas determined

by the Commissioner to be "resort areas", and (b) permitting owners or operators of hotels to obtain injunctions against mortgagors who engage in practices violating the 1954 statute (R. 13–14).

Appellant filed a cross-complaint asking for an order enjoining appellee (a) from renting any accommodations for any term less than thirty days; (b) from charging rent in excess of the schedule approved by the Commissioner; (c) from renting furnished apartments and supplying services without the written approval of the Commission; and (d) from advertising or holding out transient or guest accommodations (R. 22–27).

After holding hearings, Judge Hoffman,[10] sitting as a single judge, held that, prior to 1954, appellee had had the right to rent its apartments for periods of less than thirty days (R. 112) and that Congress lacked the constitutional power to take away that right (R. 116). Therefore, he concluded, the Administration may not "prohibit the rental of a reasonable number of apartments in The Darlington for periods

[10] On August 25, 1955, Judge Hoffman, on the pleadings, requested the convening of a three-judge district court "pursuant to 28 U. S. C. A. § 2284" because he concluded that an examination of the constitutionality of Section 513 of the Housing Act of 1954 was unavoidable (R. 32–33). On August 29, 1955, Chief Judge Parker convened a three-judge district court (R. 34–35). However, that court dissolved itself and returned the case, for hearing, to Judge Hoffman (R. 36–39) because it concluded that "the real question involved is one of statutory interpretation rather than the validity of the statute" (R. 37–38), and in any case, because the granting of an injunction would not be proper, since it would simply be an injunction to enjoin the Administration from securing an injunction. 134 F. Supp. 337 (R. 38).

of less than thirty (30) days, as long as priorities are maintained for the persons entitled thereto and no proper person desiring occupancy for a period of thirty (30) days or more is thereby precluded from obtaining accommodations". (R. 120). However, recognizing that the Federal Housing Administration at all times had the power to pass on maximum rentals of furnished as well as unfurnished apartments, Judge Hoffman enjoined appellee from renting furnished apartments until a rent schedule covering such apartments was approved (R. 111, 121).[11]

In addition, Judge Hoffman expressed the view that the 1954 Act was discriminatory against rental housing projects, such as that of appellee, which are not in "resort areas" (*R. 119–120*), *and* that the statute "is designed to afford relief for private interests, as distinguished from public purposes" (R. 120). He did not, however, rely upon these considerations in holding the 1954 Act unconstitutional in its application to appellee.

Upon direct appeal, pursuant to 28 U. S. C. 1252, this Court noted probable jurisdiction; reversed Judge Hoffman's judgment on the ground that, under

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[11] Noting the fact that the furniture was owned by the Long Corporation, rather than appellee itself, Judge Hoffman, dismissed the distinction with the observation that the "rather ingenious scheme is a mere subterfuge" with which he had "no patience." (R. 111.) The decree also declared that appellee has no right to advertise its willingness to accept transients, nor to obtain a license to operate as a hotel. However, as to these matters no injunction was required, in Judge Hoffman's view, since the Federal Housing Administration had not contended that appellee advertised for transient occupants (R. 121).

28 U. S. C. 2282, an injunction restraining the enforcement of an Act of Congress for repugnance to the Constitution cannot be granted by a single district judge; and remanded the case for consideration by a three-judge district court. 352 U. S. 977.

Upon remand, the three-judge district court, with a minor correction,[12] adopted Judge Hoffman's findings and conclusions. 154 F. Supp. 411 (R. 127–130). However, in permitting appellee to offer apartments for transient occupancy, the court imposed the following conditions: (a) no more than 15 per cent of appellee's apartments may be made available for occupancy for periods of less than 30 days; (b) the rentals for furnished apartments may not be increased; (c) appellee may not advertise itself as a "hotel" nor otherwise solicit transient business; and (d) appellee may provide neither food and beverage room service, nor regular bell boy service (R. 131).

SUMMARY OF ARGUMENT

The holding of the court below that Section 513 of the National Housing Act is unconstitutional in its application to appellee rested upon the preliminary determination that, prior to the enactment of the Section in 1954, appellee had been entitled to rent its apartments to transients. We submit that the premise is erroneous and that, therefore, there is no necessity to reach the constitutional issue. We argue further

[12] Judge Hoffman erroneously stated that, in leasing apartments, the National Housing Act requires that preference be given to both veterans and war workers (R. 112). In fact, war workers do not receive preference under the 1946 amendment.

that, even if rental to transients had been permissible at the time the mortgage on appellee's project was insured, there would be no constitutional objection to the application of Section 513 to appellee.

I

A. In Section 513 (a), Congress formally declared in 1954 that it had been its intent, since the enactment of the National Housing Act, that insured projects, such as that here involved, were not to be used for transient or hotel purposes. This declaration is entitled to great weight in the construction of Section 608 of the Act, under which appellee's project was insured. This is especially so in view of the legislative history of Section 513 (a), which discloses that both the Senate and the House Committees gave careful consideration to the terms of the declaration.

B. The legislative history and background of Section 608 bear out the declaration: they show that, from the beginning, the purpose of Congress was to provide permanent housing. Federal insurance of mortgages covering multi-family rental housing projects was first authorized in 1934, by Section 207 of the National Housing Act. That provision was adopted to remedy the severe housing shortage resulting from the depressed condition of the building trades industry. In 1942, Section 608 was enacted to provide rental housing for war workers. In order to stimulate residential construction, Section 608 raised the insurable mortgage limit from 80 per cent of appraised value to 90 per cent of reasonable replacement cost, with the qualification that war workers must

receive occupancy preference. In 1946, Section 608 was amended as part of the veterans' emergency housing program, so that veterans, instead of war workers, became the recipients of the occupancy preference. Nowhere in the legislative history and background of either Section 608 or its predecessor is there the remotest suggestion that housing projects subject to federally insured mortgages may be operated to accommodate transients.

C. The administrative regulations, which have been in effect since long before appellee's project was insured, demonstrate that the Federal Housing Administration has consistently construed Section 608 as not entitling a project owner to rent apartments to transients. This interpretation by the body charged with the administration of the National Housing Act may be overturned only if the statutory test is so plain and unambiguous "as to leave nothing for construction". *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315.

D. Appellee's own charter bears witness that the use of the project for transient rental was neither contemplated nor authorized. The charter terms indicate that the units were to be rented on a monthly (or longer) basis.

II

Even if appellee was not prohibited from renting its apartments to transients prior to the 1954 enactment of Section 513, it has been expressly prohibited from doing so since that time. This prohibition is valid as applied to mortgages insured prior to the enactment. There is no constitutional objection to

retrospective legislation in general, nor specifically to Congressional legislation affecting existing contracts. And the application of Section 513 to existing mortgages does not offend due process.

If, prior to 1954, appellee had a right to assume that it might rent its apartments to transients, this "right" was based, at most, on the *absence* of an express prohibition, rather than on a "clearly and unequivocally expressed" authorization. *Keefe* v. *Clark*, 322 U. S. 393, 396–397. Moreover, there is no showing that appellee in any way relied upon such an assumed right in entering its mortgage insurance contract. Therefore, the "right," which, at the least, was always open to substantial question, is hardly among the "practical and substantial rights" which the Constitution was "intended to preserve". *Davis* v. *Mills*, 194 U. S. 451, 457. While Congress carved out an exception to its prohibition against transient renting for those mortgagors which, prior to 1954, had applied for and received Federal Housing Administration permission to rent to temporary occupants, due process did not require that this gratuitous exception be extended to appellee, which had rented to transients without the Administration's approval.

ARGUMENT

The court below has held that Section 513 of the National Housing Act, added in 1954, which expressly prohibits transient rentals in insured projects, is unconstitutional in its application to appellee. Underlying the holding is the premise that, prior to the passage of the 1954 Act, such rentals were permissible.

In Point I below, we argue that this premise is erroneous and that there is accordingly no necessity for this Court to reach the constitutional issue.[13] In our view, the same prohibition against transient rentals which is contained in Section 513 was in effect when appellee's mortgage was insured, in 1949–1951, by the Federal Housing Administration. We rely upon (1) the 1954 formal congressional declaration respecting the purpose of Section 608 of the National Housing Act; (2) the legislative background of Section 608 itself; and (3) the pertinent administrative regulations. Additionally, insofar as this particular appellee is concerned, its own charter reflects the prohibition.

In Point II, we urge that, even if rentals to transients had been permissible at the time the mortgage here involved was insured, there would be no constitutional objection to the application of Section 513 to appellee.

I. The National Housing Act and pertinent regulations in effect on December 30, 1949, as well as appellee's charter itself, prohibit rental of appellee's dwelling units to transient occupants

A. Congress has formally declared that the purpose of the National Housing Act excludes the use of insured housing for transient occupancy

Section 513 (a) of the 1954 Act contains this formal congressional declaration respecting the underlying purpose of the National Housing Act:

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[13] Cf. *Peters* v. *Hobby*, 349 U. S. 331, 338; *Veese* v. *Southern R. Co.*, 350 U. S. 77, 78; *Communist Party* v. *Subversive Activities Control Board*, 351 U. S. 115, 122; *United States* v. *International Union, U. A., A. & A. I. W.*, 352 U. S. 567, 590; *United States* v. *Witkovich*, 353 U. S. 194, 201–202.

> The Congress hereby declares that it has been its intent since the enactment of the National Housing Act that housing built with the aid of mortgages insured under that Act is to be used principally for residential use; and that this intent excludes the use of such housing for transient or hotel purposes while such insurance on the mortgage remains outstanding.

It was under the terms of Section 608 of that Act, as amended in 1946, that the mortgage on appellee's project had been insured.

1. This Court has frequently looked to subsequent legislation "to assist in the interpretation of prior legislation upon the same subject," *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 309. See, *e. g.*, *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262 (1906 and 1909 statutes used to construe 1875 statute), *United States* v. *Bowling*, 256 U. S. 484 (1914 statute used to construe 1910 statute), *New York, P. & N. R. R. Co.* v. *Peninsula Produce Exch. of Md.*, 240 U. S. 34 (1914 statute used to construe 1906 statute), and *Bailey* v. *Clark*, 21 Wall. 284 (1872 statute used to construe 1866 statute). And when, as in the present case, the subsequent legislation expressly declares the intent of the prior legislation, it is entitled to "great weight" in construing the earlier statute. *United States* v. *Stafoff*, 260 U. S. 477, 480. See, also, *First National Bank* v. *Missouri*, 263 U. S. 640, 658.

Perhaps the most striking use of subsequent congressional action to ascertain prior legislative intent was this Court's use of a later committee report in *Sioux Tribe of Indians* v. *United States*, 316 U. S. 317. That case involved a suit for compensation for

land, based on the General Allotment Act of 1887 which, *inter alia*, authorized the President to allot reservation land, in severalty, to Indians living on the particular reservation. In 1892, five years after the General Allotment Act was passed, the Senate Committee on Indian Affairs, in reporting a wholly unrelated bill, commented that "[a]n erroneous idea seems to have grown up, that the Indian allotment act and its amendments have * * * operated to confer titles upon the Indians * * *. It would be preposterous to place such a construction upon the language of this act * * *." This Court, in affirming denial of the Indian claims, said that "[t]his statement by the Committee which reported the General Allotment Act of 1887, made within five years of its passage, is *virtually conclusive* as to the significance of that Act" (emphasis added), *id.* at 329–330. Even though the subsequent declaration was only a part of a committee report it "virtually" bound this Court because the statute had been passed only five years before and because the declaration was made by the same Committee which had considered the act.[14]

2. Although the declaration in the 1954 Act may not be conclusive as to the import of the 1946 legislation, there is substantial reason for according it particular respect. The National Housing Act was reviewed and amended at least once each year between

[14] Of course, subsequent Committee declarations cannot override "the contemporaneous intent of the Congress which enacted" the legislation, *Fogarty* v. *United States*, 340 U. S. 8, 13–14.

1946 and 1954,[15] and, therefore, consideration of its purposes was continually before Congress. Moreover, the 1954 hearings and reports of the House and Senate Committees on Banking and Currency, both of which had also acted upon the 1946 legislation, disclose a careful scrutiny of the terms of the declaration. For example, during the hearings of the House Committee, the Chairman, Representative Wolcott, who had been the ranking minority member of the Committee in 1946,[16] stated that "it was never the intent of Congress that the FHA would insure a commercial property. We had a lot of deliberation on that question before this committee and we have never gone into the commercial field, in FHA, and we surely wouldn't want to set up a situation * * * where Government moneys were used to set up competition for privately financed industries * * *." *Hearings before the Committee on Banking and Currency*, House of Representatives, 83d Cong., 2d Sess., on H. R. 7839, p. 514. Similarly, Representative Kilburn, also a member of the House Committee on Banking and Currency in 1946,[17] observed that "if we pass legislation to help housing for the country, * * * it doesn't mean that we are passing legislation to increase competition for hotels. That isn't housing." *Id.*, at p. 513.

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[15] The Act of 1954 was the twenty-sixth amendment of the National Housing Act since the Veterans Emergency Housing Act of 1946. See *National Housing Act As Amended*, Revised Aug. 30, 1957 (FHA-107), Part II.

[16] *Congressional Directory*, 79th Cong., 2d Sess., p. 200.

[17] *Ibid.*

This conclusion was emphasized by both committees in their reports. The House Report states:

> The rental insurance programs of the National Housing Act are designed to provide rental accommodations for family use. The mortgage loans insured are amortized by monthly payments of principal and interest derived from monthly rental income. A project is not insured unless the FHA has determined there is an adequate need for such accommodations in the community. The programs are not designed to cover hotels, nor is the insurance of hotel properties permitted. The fact that a project has been insured should therefore be a prohibition to rental on a transient basis. [H. Rept. No. 1429, 83rd Cong., 2d Sess., p. 17]

And the Senate Report contains the Committee's opinion:

> * * * that the benefits provided under the National Housing Act were designed to increase the supply of permanent residential housing, not to increase the supply of hotels or motels or similar establishments catering to nonpermanent residents.
>
> Your committee does not believe the spirit of this intent is violated by the operation of a commercial establishment included to serve the needs of families residing in rental projects operated as permanent residential housing projects (as distinguished from those operated to provide transient accommodations) but it firmly believes that the operation of such establishments should not be conducted in such a manner as to convert the use of all or any portion of

> the housing units in the project from permanent, residential use to a project furnishing transient accommodations. * * * [S. Rept. No. 1472, 83rd Cong., 2d Sess., p. 31].

In short, Section 513 of the National Housing Act of 1954, which explained that the purpose of Congress in 1946 excluded the use of Section 608 housing "for transient or hotel purposes while such insurance on the mortgage remains outstanding," is highly persuasive that the Act of 1946 did not permit Section 608 rental project owners to offer their apartments for transient occupancy.

B. The legislative background and history of the 1946 Act confirm the conclusion that projects insured under Section 608 are not to be occupied by transients

Viewed within the framework of an extensive legislative history, Section 608 manifests a single dominant aim: facilitating residential construction for families. Indeed, the court below apparently conceded that this was "the primary intent of Congress" (R. 115). Not only is the notion of renting such residential dwelling units to transients repugnant to this underlying purpose; it is hardly conceivable that Congress intended to permit federally supported rental housing projects to operate to the obvious competitive disadvantage of hotels which were built without the considerable assistance of "90% to 100% financing guaranteed by an agency of the United States" (R. 114). The history fully warrants indulgence of the normal assumption that Congress intended to pursue its "overriding public policy" (increase in the supply of permanent housing) "with the least possible harm to citizens". *Otis & Co.* v.

Securities and Exchange Commission, 323 U. S. 624, 637, 638.

1. Section 608, as amended in 1946, is derived from Section 207 of the National Housing Act of 1934, 48 Stat. 1246, 1252. It has been estimated that, in the spring of 1934, about one-half of the Nation's real estate mortgages were in default and that virtually all sources of new mortgage money had dried up. 38 Op. Atty. Gen. 258, 264. At a time when housing was inadequate for an expanding population,[18] and many homes "in decadent condition and not fit for human habitation" were in need of "repairing and modernizing to bring them up to the standard of the times,"[19] the building industry was immobilized. Construction of non-farm dwelling units in 1933 had dropped to less than 8 percent of the 1920–1929 average, and construction of multi-family structures within that classification had decreased by an even greater percentage.[20] The results were inadequate repair of existing houses, sharing of quarters by many families, and extensive unemployment in the building trades industry.[21]

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[18] "The construction of housing facilities has not kept pace with either the needs or growth of the population * * *." Report on National Housing Amendments of 1937, H. Rept. 1655, 75th Cong., 2d Sess., p. 1.

[19] Message from President Roosevelt, May 14, 1934, 78 Cong. Rec. 8739.

[20] S. Rept. 1300, 75th Cong., 2d Sess., p. 2. Sources: National Bureau of Economic Research, 1920–35; Federal Housing Administration, 1936; Federal Housing Administration, Division of Economics and Statistics, Table No. 21 (revised Nov. 16, 1937).

[21] *Id.* at pp. 2–3.

Therefore, in order "to encourage improvement in housing standards and conditions, [and] to provide a system of mutual mortgage insurance," Congress enacted the National Housing Act, which in Section 207, 48 Stat. 1246, provided:

> The Administrator may also insure first mortgages * * * covering property held by Federal or State instrumentalities, private limited dividend corporations, or municipal corporate instrumentalities of one or more States, formed *for the purpose of providing housing for persons of low income* which are regulated or restricted by law or by the Administrator as to rents, charges, capital structure, rate of return, or methods of operation. * * * [Emphasis added.]

This section was expanded by the National Housing Act Amendments of 1938, 52 Stat. 8, 16, which limited the amount of the mortgage to 80 per cent of the appraised value (Sec. 207 (c)) and permitted participation by "private corporations, associations, cooperative societies which are legal agents of owner-occupants, or trusts formed or created *for the purpose of rehabilitating slum or blighted areas, or providing housing for rental or sale.* * * *" (Emphasis added.) (Sec. 207 (b) (2).) Thus, the purpose of Section 207 was expanded from "providing housing for persons of low income" to "rehabilitating slum or blighted areas, or providing housing for rental or sale." This was a broad program for social and economic betterment and it is impossible to read into it even a collateral purpose to aid the financing of rental units for transient occupancy.

2. In 1942, Congress was faced with a critical problem of housing millions of workers moving into areas of war industry.[22] Although many were housed in temporary quarters, such as tourist camps, and in dormitories, it was apparent that there was a need for at least 200,000 permanent family units.[23] Consequently, in order to encourage builders to construct permanent rental projects for family units, Congress enacted Section 11 of the National Housing Act Amendments of 1942, which introduced a new Section 608. 56 Stat. 301, 303.

In three respects, Section 608 differed from Section 207. First of all, Section 608 gave much greater discretion to the Federal Housing Administration so as to introduce far more flexibility than existed under the carefully defined rules of Section 207.[24] Secondly, and even more important from the standpoint of expediting the construction of permanent family units, the authorized mortgage limit was increased from 80

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[22] In April 1942, the National Housing Agency Administrator estimated that, until July 1, 1943, there would be a need for providing accommodations for 1,600,000 workers moving into areas of war industry. Hearings before Subcommittee of the Senate Committee on Banking and Currency on H. R. 6927, 77th Con., 2d Sess., p. 5. It has also been estimated that, from 1941 to 1945, four million workers, many with families, migrated to war centers. *The Housing Situation. The Factual Background* (Housing and Home Finance Agency, 1949, p. 16).

[23] Hearings before Subcommittee of the Senate Committee on Banking and Currency on H. R. 6927, 77th Cong., 2d sess., p. 5.

[24] Testimony by the Federal Housing Commissioner, Hearings before the Subcommittee of the Senate Committee on Banking and Currency on H. R, 6927, 77th Cong., 2d Sess., p. 13.

per cent of appraised value to 90 per cent of reasonable replacement cost (Sec. 608 (b) (3) (B)). Thirdly, the mortgaged property was to "be designed for rent for residential use by war workers" (Sec. 608 (b) (2)). The Administration was authorized, at the same time, to prescribe procedures to insure that war workers received priority in occupancy (Sec. 603).

In all other respects, Section 608 was virtually identical with Section 207.[25] Nowhere in the legislative history of the National Housing Act Amendments of 1942 is there the slightest suggestion that the mortgaged property could be used for transient occupancy.

3. The return of veterans after World War II precipitated a housing crisis requiring the construction of over three million new housing units during 1946 and 1947.[26] At the beginning of 1946, 1,200,000 families were sharing dwellings with other families,[27] and it was predicted that, despite the veterans' emergency housing program, an additional 758,000 families would be sharing living accommodations at the end of 1947.[28] Many veterans, uncertain of their future income and permanent location, preferred to rent rather than buy homes,[29] especially since they believed prices of existing homes were inflated.[30] Therefore, although Sec-

[25] See S. Rept. No. 1300, 77th Cong., 2d sess., p. 2; H. Rept. No. 2039, 77th Cong., 2d Sess., p. 2.

[26] Remarks by Senator Barkley, 92 Cong. Rec. 3265; see, also, S. Rept. 1130, 79th Cong., 2d Sess., p. 2; H. Rept. 1580, 79th Cong., 2d Sess., p. 4.

[27] *Ibid.*

[28] S. Rept. 1130, 79th Cong., 2d Sess., p. 2.

[29] *Id.* at 9.

[30] Remington, *The Veterans' Emergency Housing Program*, 12 Law and Contemporary Problems 143 (1947).

tion 608 had been enacted in 1942 as "temporary war legislation,"[31] it was retained in 1946 as part of a program "to accelerate the production of houses with preferences for veterans of World War II and at sales prices or rentals within their means," 60 Stat. 207, 208. Of course, the occupancy priority in Section 608 projects afforded to war workers under the 1942 Act was deleted, and priority was given instead to "veterans of World War II and their immediate families" (Sec. 10 (f)).

Once again, it is plain that the purpose of Congress was to provide permanent housing for millions of persons who were inadequately housed. There is no indication of Congressional concern for transient accommodations. And certainly there is not the remotest suggestion that Congress intended to permit Section 608 housing projects to compete with hotels for transient occupants.

C. The Federal Housing Administration has uniformly interpreted Section 608 as not entitling owners of insured projects to rent to transients

Beginning in 1947, long before appellee's project was approved by the Federal Housing Administration, Section 608 was administratively construed as not permitting rental to transients. This construction, contemporaneously adopted and consistently applied, is to be given great weight. Indeed, it could be overturned only if the statutory text were so plain and unambiguous "as to leave nothing for con-

[31] Testimony of the then Federal Housing Commissioner before the Subcommittee of the Senate Committee on Banking and Currency on H. R. 6927, 77th Cong., 2d Sess., p. 10; see, also, pp. 12–13.

struction." *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315; *United States* v. *American Trucking Associations*, 310 U. S. 534, 549; *United States* v. *Public Utilities Commission*, 345 U. S. 295, 314–315. Moreover, the regulations manifesting the administrative view were incorporated (by reference) in the contract of insurance pertaining to appellee's project.

1. At the time that appellee's mortgage was initially approved for insurance by the Federal Housing Administration, the regulations required that the mortgagor be "[a] corporation or trust formed or created, with the approval of the Commissioner, *for the purpose of providing housing for rent or sale*," which, so long as the insurance remains in effect, may "*engage in no business other than the construction and operation of a rental housing project or projects.*" (Emphasis added; 24 C. F. R. 280.26 (a).) Additionally, the regulations stipulated that:

> • • • At the time the mortgage is insured the mortgagor shall have constructed and completed or shall be obligated to construct and complete new *housing* accommodations on the mortgaged property *designed principally for residential use*, conforming to standards satisfactory to the Commissioner, and consisting of not less than eight (8) rentable *dwelling* units on one site and may be detached, semidetached, or row houses, or multifamily structures. [Emphasis added; 24 C. F. R. 280.34.]

The court below construed the words "designed principally for residential use," as used in 24 C. F. R. 280.34, to include transient rentals, and consequently concluded that catering to temporary occupants is not

a "business other than the * * * operation of a rental housing project." This construction is inconsistent with the context in which that phrase is used in the regulations implementing Section 608. Moreover, it is inconsistent with the uniform administrative interpretation of the phrase in relation to both 24 C. F. R. 280.34 and earlier Administration rules pertaining to mortgages insured under Title II of the National Housing Act.

(a) The phrase "designed principally for residential use," appearing in 24 C. F. R. 280.34, is followed by the words "* * * consisting of not less than eight (8) rentable *dwelling* units." The word "dwelling" denotes a permanent residence. *Schwarzschild* v. *Welborne,* 186 Va. 1052, 1058–1059, 1064–1065; *State* v. *McGrath,* 116 N. E. 2d 218 (Ohio Court of Appeals). It "involve[s] the idea of a house, a residence, where persons live in settled abode," *Barnett* v. *Vaughan Institute,* 134 App. Div. 921, 119 N. Y. S. 45, 46. Thus, a hotel or other place of mere temporary lodging is not a dwelling. *Thomas* v. *Commercial Union Assur. Co.,* 162 Mass. 29, 33; *DeWolf* v. *Ford,* 193 N. Y. 397, 402; *Woodstock* v. *The Retreat, Inc.,* 125 Conn. 52, 59.

(b) Long before the enactment of Section 608, the requirements for mortgage insurance under Title II of the National Housing Act prescribed that "[t]he dwelling shall be designed primarily for residential purposes."[22] The requirements in addition specified the permissible limits of nonresidential use as

[22] *Property Standards* (F. H. A. No. 2019; revised February 15, 1935), p. 10.

"twenty-five percent (25%) of the net rentable floor area of the building * * * designed or used for industrial, commercial, or professional occupancy."[33] The qualification "designed principally for residential purposes" was thus inserted in the earlier rules to indicate that mortgages would be insured even though the buildings contained stores, restaurants, doctors' offices, etc.

As employed in 24 C. F. R. 280.34, the phrase similarly was intended to reflect that the Administration would approve the insurance of "multifamily housing projects in which space is set aside for commercial facilities, catering to the resident families."[34] The Administration has never interpreted this language as permitting transient accommodations (R. 244).[35] On the contrary, it has consistently ruled that tran-

[33] *Ibid.*

[34] Affidavit of Norman P. Mason, Commissioner of the Federal Housing Administration (R. 33).

[35] Affidavit of Adolphus M. Prothro, a staff member of the Legal Division of the Administration since 1937, and currently the Director of that Division (Def. Ex. 6; R. 54, 244). In answer to a question by counsel concerning the purpose of "carrying this language," Mr. Prothro stated:

"The primary purpose is to avoid those questions which might come up if we said only residential use. There would be a question about whether if there is going to be a doctor's office in the building, whether we could properly insure that mortgage, or if there is going to be a parking lot facility in connection with it, whether we could properly insure that mortgage. In the small home field like a single family home where we use that same language, we are not even thinking about hotels of course; we are thinking about such things as maybe some outbuildings in a suburban area where a person might park his plumber's truck, or he might keep some pet rabbits that he is raising, or something of that sort, and sell the rabbits. Then there is a combination there, to be a slight combination of commercial with residential. Now, we feel that

sient rentals are prohibited, at least in the absence of Administration approval (R. 92).

(c) For the express purpose of enabling applicants for Section 608 mortgage insurance to ascertain what types of rental housing projects were "contemplated by the National Housing Act and preferred by the Federal Housing Administration," the Federal Housing Administration, in September 1947, revised its instruction booklet, entitled *Planning Rental Housing Projects* (Pl. Ex. 31; R. 44, 226; App. C, *infra*, pp. 58–59). The instructions began with this interpretation of the word "housing":

> [D]welling quarters for families—quarters which offer complete facilities for family life. A large variety of project types is possible: groups of single-family dwellings, row or group houses, row flats, walk-up apartments, and elevator apartments. Depending upon circumstances, any of these may occur not far from business districts of a city, or in less densely populated areas, or in its suburban sections.

It was then indicated that projects with the following characteristics were to be preferred:

> 1. Location in a distinctly *residential* area, which promises to retain good character.

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when we value those properties that we need some language like this in the statute to protect us against criticism later on or against actual violation of the statute. The only exception being the Title VIII program, which is the military program, we carry only the word "residential" use there; not "principally for residential use" because that housing is built on a military base where Congress clearly did not want us to insure any commercial facility—no store, no dentist office or anything of that sort." [R. 94–95.]

2. A type of living unit that will appeal to a *long-term rather than a temporary occupant.*

3. Income from *dwellings* adequate to assure the financial success of the project, with income from the rental of garages, stores, and other facilities only a minor factor. [Emphasis added.]

* * * * *

In this connection, it was made clear that "[*r*]*ental housing projects in distinctly commercial areas, hotels, apartment hotels, dormitories,* [*and*] *club buildings partly devoted to residential use* * * * *are not considered acceptable,* as they lack these characteristics." (Emphasis added.) App. C, *infra,* p. 59.

(d) Still further indication that the court below misconstrued the administrative regulations is to be found in the "application for mortgage insurance under Section 608 of the National Housing Act" (Pl. Ex. 17), revised by the Federal Housing Administration in May 1946. The applicant was required to estimate the annual operating expenses of its proposed housing project. The expenses listed were: elevator power, elevator maintenance, fuel, janitors' supplies, lighting and miscellaneous power, water, gas, garbage and ash removal, and wages for engineers, janitors, porters, handymen, groundskeepers, watchmen and other operating personnel. Significantly, the list does not include linen supply, the expense of cleaning apartments and the many other costs which are incidental to the provision of transient accommodations.

2. The policy against transient rentals was maintained during the entire period from 1946 until 1954.

This is evidenced by a series of letters from the Assistant Commissioner of the Administration to the Directors of the field offices (R. 241–244, 247–250). On August 10, 1951, a month prior to appellee's submission of its proposed rent schedule, the Administration authorized Field Directors to permit rental of furnished apartments so long as the furniture rental charge was "not more than 1/48th of actual cost" of the "basic items of furniture." (Def. Ex. 10; R. 69, 247.) By limiting the rental charge to the cost of basic items such as "rugs, chairs, sofas, beds, bureaus, etc., necessary for comfortable occupancy, as distinguished from such items as linens, china, cutlery, or similar items, necessary for complete living accommodations" (R. 248–249), the Administration precluded the use of furnished apartments for transient occupancy. Indeed, the Administration carefully pointed out to the Field Directors that, "in considering rent schedules and methods of operation proposed by mortgagors," they should:

> * * * bear in mind that the objective of this Administration is the production of housing designed for occupancy of a relatively permanent nature and that *transient occupancy is contrary to policy. No approval will be granted with respect to a proposal anticipating transient occupancy.*[36] [Emphasis added; R. 250.]

[36] As to furnished apartments generally, the letter stated, "No charge shall be made by the mortgagor against tenants in addition to those established by a rent schedule approved in accordance with the foregoing formulae, *nor shall the owners* or representatives of the mortgagor, *either by themselves personally or through entities controlled by them*, be permitted by

Subsequent to the letter of August 10, 1951, the Administration learned that some Section 608 rental housing projects were still "catering to transient occupancy" (Def. Ex. 1; R. 53, 241). Therefore, on January 3, 1952, the Administration found it "necessary to supplement and expand" its earlier directive by providing that "no approval will be granted for furniture rentals in any rental housing project unless the Director * * * is firmly of the opinion that furniture is essential to obtain satisfactory occupancy, and approval of furniture rentals will be given then only in the event of prior agreement by the mortgagor not to accept any tenancy for a period of less than 30 days" (R. 242).

In sum, from the inception of the program to increase rental housing for veterans, the Federal Housing Administration has consistently construed the National Housing Act as not entitling Section 608 project owners to rent their dwellings to transients. It is true that in approximately twelve to fifteen instances (R. 112) the Administration specifically approved transient occupancy. This approval did not, however, stem from a belief that project owners had the right, under either the 1946 Act or the implementing regulations, to rent to transients. Rather, the Administration was simply purporting to invoke the authority granted to the Commissioner to regulate the mort-

way of subterfuge or otherwise to make additional charges against tenants with respect to facilities or services provided at the project. If tenants desire services in addition to those contemplated in the establishment of the rent schedule they are expected to make arrangements for the same independently and on their own behalf." (R. 249; emphasis added.)

gagor's methods of operation. It did so in the belief that, in these particular and limited instances, transient rentals were "in the public interest, in the interest of the Government's financial interests, and in the interest of the community in which the structure existed in which there was no demand for apartment rentals" (R. 92). It is to be noted in this connection that Section 513 (b) of the 1954 Act granted an exception to owners of Section 608 projects who, unlike appellee, had applied for and received such approval.

D. Appellee's own charter contemplates that its housing units are not to be rented to transients

As is seen from its terms, appellee's corporate charter, consonant with the National Housing Act and the pertinent regulations, contemplates that apartments in appellee's project may be rented only to long-term tenants. For example, paragraph 8 (a) (1) requires Administration approval of the "average rental per room *per month* * * * prior to *leasing* or offering for *lease* of any of the *dwelling* accommodations" (R. 189, emphasis added). The italicized words indicate a long-term period of rental, and certainly the wording of the charter cannot be reconciled with the practices followed by appellee with respect to transient occupancy and permitted by the decree of the court below. The transient is "accepted, directed to his room, and, upon leaving, * * * given a receipt" for his payment of "rent" and telephone charges (R. 110). While occupying his furnished quarters, he is provided maid service (R. 230), linen service (R. 64, 230) and utilities (R. 64). Clearly the relationship be-

tween appellee and its transient occupants is not based on a lease, one of the incidents of which is exclusive possession of the rented premises.[37]

Moreover, in addition to the use of the words "dwelling accommodations" (see *supra;* p. 32), the charter expressly declares that, without approval by the Federal Housing Administration, appellee may not "require as a condition to the occupancy or leasing of any unit in the project the payment * * * of any amount other than the payment of the first month's rent plus a security deposit * * * not in excess of one month's rent to guarantee the performance of the covenants of the lease" (Pl. Ex. 19, R. 43, 187). This provision necessarily contemplates that the rental of appellee's apartments shall be for a period of at least one month. *Mason* v. *Rock Creek Plaza,* decided June 30, 1958 (D. D. C.).

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[37] Although no single test may be conclusive, all of the following factors indicate an absence of exclusive possession: the premises were furnished, *Hundley* v. *Milner Hotel Mgt. Co.*, 114 F. Supp. 206, 208 (W. D. Ky.), affirmed, 216 F. 2d 613 (C. A. 6); *Carroll* v. *Cooney*, 116 Conn. 112, 115; maid service was provided, *Martin* v. *Shryock Realty Co.*, 236 Mo. App. 1265, 1270; *Tamamian* v. *Gabbard*, 55 A. 2d 513, 514 (D. C. Mun. Ct. App.); linen was supplied, *Lindsey* v. *Watson*, 83 A. 2d 226, 227 (D. C. Mun. Ct. App.); *Lambert* v. *Sine*, 123 Utah 145, 149; utilities were provided, *Marden* v. *Radford*, 229 Mo. App. 789, 803; *Roberts* v. *Casey*, 36 Cal. App. 2d 767, 772; and telephone charges were paid to appellee, *Goodell* v. *Morris Lansburgh & Associates*, 77 So. 2d 247, 248 (Fla.); *Roberts* v. *Casey*, *supra*. And perhaps the most significant factor showing that the temporary occupants of Darlington apartments do not have exclusive possession of their quarters is the very transiency of their stay, *Hundley* v. *Milner Hotel Mgt. Co.*, *supra*; *State* v. *Bowman*, 202 Minn. 44, 46.

II. The express prohibition against transient renting, contained in Section 513 of the National Housing Act of 1954, is constitutional as applied to appellee

Even if there were room for serious doubt (which we dispute) that appellee was prohibited from renting its apartments to transients prior to 1954, appellee has been expressly prohibited from doing so since the passage of the 1954 Act. On its face, Section 513 (d) of that Act forbids transient rentals in *all* projects insured under Section 608, regardless of when insured. That Section reads:

> The Commissioner is hereby authorized and directed to enforce the provisions of this section by all appropriate means at his disposal, as to all existing multifamily housing with respect to which a mortgage was insured under this Act prior to the effective date of the Housing Act of 1954 as well as to all multifamily housing with respect to which a mortgage is hereafter insured under this Act * * *.

Contrary to the view of the court below, we submit that application of the prohibition to previously insured projects is free from constitutional objection.

The Constitution, of course, "contains no prohibition of retrospective legislation as such; and therefore * * * the mere fact that a statute is retroactive in its operation does not make it repugnant to the Federal Constitution." *League* v. *Texas*, 184 U. S. 156, 161. Moreover, while states may not "pass any * * * Law impairing the Obligation of Contracts" (Art. 1, Sec. 10, cl. 1), there is no such restriction upon congressional action. Therefore, when Congress, in the exercise of an admittedly granted power, has adopted

a means reasonably adapted to achieve a legitimate legislative end, this Court has sustained such legislation even though the effect may be set aside or reduce the value of accrued contract rights. *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240; *Calhoun* v. *Massie*, 253 U. S. 170; *Capital Trust Co.* v. *Calhoun*, 250 U. S. 208; *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *Philadelphia, B. & W. R. Co.* v. *Schubert*, 224 U. S. 603; *Wright* v. *Union Central Insurance Co.*, 304 U. S. 502; *Lichter* v. *United States*, 334 U. S. 742; *Block* v. *Hirsh*, 256 U. S. 135; *Bowles* v. *Willingham*, 321 U. S. 503.[38] The Court has pointed out that "when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity," *Norman* v. *Baltimore & Ohio R. R. Co.*, 294 U. S. 240, 307–308, and that a person who contracts in an area in which the legislature had exercised its power must expect further legislation on the same subject. *Veix* v. *Sixth Ward Assn.*, 310 U. S. 32, 38.

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[38] The Court has likewise sustained the validity of state legislation substantially reducing the value of "vested" contract rights as consistent with the Constitutional prohibitions against state impairment of contract obligations and against deprivation of property without due process, so long as the legislation bears a reasonable relation to a legitimate legislative purpose. *East New York Savings Bank* v. *Hahn*, 326 U. S. 230; *Gelfert* v. *National City Bank*, 313 U. S. 221; *Veix* v. *Sixth Ward Assn.*, 310 U. S. 32; *Honeyman* v. *Jacobs*, 306 U. S. 539; *Richmond Corp.* v. *Wachovia Bank*, 300 U. S. 124; *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398; *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Faitoute Co.* v. *Asbury Park*, 316 U. S. 502; *Pennsylvania Hospital* v. *Philadelphia*, 245 U. S. 20.

Lynch v. *United States,* 292 U. S. 571, cited by the court below, does not stand for the proposition that the congressional power to modify a contract is destroyed by the circumstance that the United States is a contracting party. In *Lynch,* this Court invalidated, on due process grounds, a statute which completely repudiated obligations expressly assumed in contracts of personal insurance—the very obligation upon which the insured relies in paying premiums—for no reason other than to save the Government money. While recognizing that Congress can annul or amend contractual relations of the United States in proper circumstances, the Court regarded the legislative desire to reduce Government expenditures as insufficient justification for "abrogat[ing] outstanding contracts" and "reliev[ing] the United States from all liability on the contracts without making compensation to the beneficiaries" (P. 579).

No such due process objections can be raised with respect to Section 513. If appellee had any basis for believing that it might rent its apartments to transients prior to 1954, that belief was not founded upon an express congressional or administrative approval, but rested upon the mere *absence* of an express prohibition. Cf. *Perry* v. *United States,* 294 U. S. 330. At best, the legality of transient rentals was speculative and argumentative, not clear or well understood—hardly among the "practical and substantial rights" which the Constitution was "intended to preserve." *Davis* v. *Mills,* 194 U. S. 451, 457. In the view most favorable to appellee, the 1954 amendment simply extended the reach of legislative

regulation, on a matter already subject to legislation, into an area in which appellee had, at most, disputed and unclear rights.

Without a showing that a vested right had been expressly and unquestionably conferred upon appellee, no constitutional objection to Section 513 can be sustained for "[t]he continued existence of a government would be of no great value, if, by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation * * *." *Charles River Bridge* v. *Warren Bridge,* 11 Pet. 420, 548. For example, in *Keefe* v. *Clark,* 322 U. S. 393, special assessment drain bonds were issued in 1927 implicitly subject to a statutory provision that the additional assesments would be levied upon the improved properties if there were insufficient funds to pay the principal and interest of matured bonds. In 1937, the Michigan legislature authorized the sale for unpaid taxes of subject land parcels free and clear of all encumbrances. Appellant bond holders contended that the earlier statute had given them an indefeasible right to have a deficiency assessment levied on every parcel of land in the drain district regardless of whether a particular parcel had been sold at a tax sale. Consequently, they argued, the 1937 legislation impaired their contract with the local drain commissioner. This argument was rejected because (at pp. 396–397):

> [b]efore we can find impairment of a contract we must find an obligation of the contract which has been impaired. Since the contract here relied upon is one between a political sub-

> division of a state and private individuals, settled principles of construction require that the obligation alleged to have been impaired be *clearly* and *unequivocally* expressed. * * *
>
> We do not find in the provision of the drain statute relied upon by appellants a *clear* and *unequivocal* purpose of Michigan to permit drain districts to bargain away the State's power to sell tax-delinquent lands free of encumberances. * * * [Emphasis added.]

Moreover, there is no indication that appellee's agents relied upon, or even considered, transient rentals at the time they entered into the insurance contract. Rather, it would seem that this was simply a "mere afterthought" with which "due process of law is not concerned." *Helis* v. *Ward*, 308 U. S. 365, 370.[*]

Not only does Section 513 *not* deprive appellee of any property without due process; on the contrary, it displays a punctilious legislative respect for "fundamental fairness" (*Lisenba* v. *California*, 314 U. S.

[*] In *Perry* v. *United States*, 294 U. S. 330, the Court invalidated a statute annulling a gold-clause obligation which had been inserted in United States bonds, under express congressional authorization, deliberately to guard against the very contingency of depreciated payment which the later gold-clause legislation of 1933 would have required. Although this renunciation by Congress of an obligation which had been expressly assumed by it, and which was quite clearly relied upon by bond purchasers, might have been struck down on due process grounds, this Court did not reach that question. Rather the statute was declared invalid as contravening Art. 1, Sec. 8, cl. 2, which authorizes Congress "To borrow Money on the credit of the United States."

219, 236) toward persons whose mortgages were insured by the Administration prior to the 1954 Act. Despite the fact that Congress believed that Section 608 at all times prohibited transient rentals, Congress did not attempt, in any way, to impose liabilities on mortgagors who, like appellee, had rented their apartments to temporary occupants. Instead, in order to bring an end to the unintended competition between Section 608 housing projects, built with the aid of 90 per cent federal mortgage insurance, and hotels, financed without federal assistance, Congress simply forbade the practice in the future. And for those few mortgagors who, prior to 1954, had applied for and received permission to rent to transients, Congress carved out an exception to the prohibition in order to preserve a privilege which the Administration (perhaps erroneously) had purported to grant. Surely the concept of due process did not require Congress to extend this exception to appellee which had never applied for permission to rent to transients. Indeed, appellee neither sought nor obtained permission before charging tenants additional amounts for furnished apartments beyond the schedule-approved rents. Cf. *Woods* v. *Stone*, 333 U. S. 472.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be reversed, and the cause remanded to the district court with instructions to dismiss appellee's complaint and to grant to the

Federal Housing Administration the relief sought in its cross-complaint.

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AUGUST 1958.

APPENDIX A

STATUTES INVOLVED

1. Section 608 of the National Housing Act, 56 Stat. 303, as amended, 12 U. S. C. 1743, provides in pertinent part:

> SEC. 608. (a) In addition to mortgages insured under section 603 of this title, the Commissioner is authorized to insure mortgages as defined in section 601 of this title (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided.
>
> (b) To be eligible for insurance under this section a mortgage shall meet the following conditions:
>
> (1) The mortgaged property shall be held by a mortgagor approved by the Commissioner. The Commissioner may, in his discretion, require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation. The Commissioner may make such contracts with, and acquire for not to exceed $100 stock or interest in any such mortgagor, as the Commissioner may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the War Housing Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Commissioner under the insurance.
>
> (2) Preference or priority of opportunity in the occupancy of the mortgaged property for veterans of World War II and their immediate families, and for hardship cases as defined by the Commissioner, shall be provided under such

regulations and procedures as may be prescribed by the Commissioner.

* * * * *

2. Section 513 of the National Housing Act, added by Section 132 of the Housing Act of 1954, 68 Stat. 610, 12 U. S. C. (Supp. V) 1731b, provides:

> SEC. 513. (a) The Congress hereby declares that it has been its intent since the enactment of the National Housing Act that housing built with the aid of mortgages insured under that Act is to be used principally for residential use; and that this intent excludes the use of such housing for transient or hotel purposes while such insurance on the mortgage remains outstanding.
>
> (b) Notwithstanding any other provisions of this Act, no new, existing, or rehabilitated multifamily housing with respect to which a mortgage is insured under this Act shall be operated for transient or hotel purposes unless (1) on or before May 28, 1954, the Commissioner has agreed in writing to the rental of all or a portion of the accommodations in the project for transient or hotel purposes (in which case no accommodations in excess of the number so agreed to by the Commissioner shall be rented on such basis), or (2) the project covered by the insured mortgage is located in an area which the Commissioner determines to be a resort area, and the Commissioner finds that prior to May 28, 1954, a portion of the accommodations in the project had been made available for rent for transient or hotel purposes (in which case no accommodations in excess of the number which had been made available for such use shall be rented on such basis).
>
> (c) Notwithstanding any other provisions of this Act, no mortgage with respect to multifamily housing shall be insured under this Act (except pursuant to a commitment to insure

issued prior to the effective date of the Housing Act of 1954), and (except as to housing coming within the provisions of clause (1) or clause (2) of the preceding subsection) no mortgage with respect to multifamily housing shall be insured for an additional term, unless (1) the mortgagor certifies under oath that while such insurance remains outstanding he will not rent, or permit the rental of, such housing or any part thereof for transient or hotel purposes, and (2) the Commissioner has entered into such contract with, or purchased such stock of, the mortgagor as the Commissioner deems necessary to enable him to prevent or terminate any use of such property or project for transient or hotel purposes while the mortgage insurance remains outstanding.

(d) The Commissioner is hereby authorized and directed to enforce the provisions of this section by all appropriate means at his disposal, as to all existing multifamily housing with respect to which a mortgage was insured under this Act prior to the effective date of the Housing Act of 1954 as well as to all multifamily housing with respect to which a mortgage is hereafter insured under this Act: *Provided,* That no criminal penalty shall, by reason of enactment of this section, be applicable to the rental or operation of any such existing multifamily housing in violation of any provision of subsection (b) of this section at any time prior to the effective date of the Housing Act of 1954.

(e) As used in this section, (1) the term "rental for transient or hotel purposes" shall have such meaning as prescribed by the Commissioner but rental for any period less than thirty days shall in any event constitute rental for such purposes, and (2) the term "multifamily housing" shall mean (i) a property held by a mortgagor upon which there are located five or more single family dwellings, or upon

which there is located a two-, three-, or four-family dwelling, or (ii) a property or project covered by mortgage insured or to be insured under section 207, under section 213 with respect to any property or project of a corporation or trust of the character described in paragraph numbered (1) of subsection (a) thereof, under section 220 if the mortgage is within the provisions of paragraph (3) (B) of subsection (d) thereof, under section 221 if the mortgage is within the provisions of paragraph (3) of subsection (d) thereof, under section 608, under section 803, or under section 908, or (iii) a project with respect to which an insurance contract pursuant to title VII is outstanding.

(f) Promptly after receipt of written notice that any portion of any building is being rented or operated in violation of any provision of this section or of any rule or regulation lawfully issued thereunder, the Commissioner shall investigate the existence of the facts alleged in the written notice and shall order such violation, if found to exist, to cease forthwith.

(g) If such violation does not cease in accordance with such order, the Commissioner shall forward the complaint to the Attorney General of the United States for prosecution of such civil or criminal action, if any, which the Attorney General may find to be involved in such violation.

(h) Whenever he finds a violation of any provision of this section has occurred or is about to occur, the Attorney General shall petition the district court of the United States or the district court of any Territory or other place subject to United States jurisdiction within whose jurisdictional limits the person doing or committing the acts or practices constituting the alleged violation of this section shall be found, for an order enjoining such acts or practices, and upon a showing by the Attorney General that such acts or practices con-

stituting such violation have been engaged in or are about to be engaged in, a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(i) Any person owning or operating a hotel within a radius of fifty miles of a place where a violation of any provision of this section has occurred or is about to occur, or any group or association of hotel owners or operators within said fifty-mile radius, at his or their sole charge or cost, may petition any district court of the United States or the district court of any Territory or other place subject to United States jurisdiction within whose jurisdictional limits the person doing or committing the acts or practices constituting the alleged violation of this section shall be found, for an order enjoining such acts or practices, and, upon a showing that such acts or practices, constituting such violation have been engaged in or are about to be engaged in, a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted.

(j) The several district courts of the United States and the several district courts of the Territories of the United States or other place subject to United States jurisdiction, within whose jurisdictional limits the person doing or committing the acts or practices constituting the alleged violation shall be found, shall, wheresoever such acts or practices may have been done or committed, have full power and jurisdiction to hear, try, and determine such matter under subsections (h) and (i) of this section.

APPENDIX B

Regulations Involved

24 C. F. R. 280, pertaining to "Multifamily War Housing Insurance; Eligibility Requirements of Mortgage Covering Multifamily Rental Housing", provides in pertinent part:

> § 280.11 *Amount of principal obligation.* The mortgage must secure a principal obligation in multiples of one hundred dollars ($100) but not exceed five million dollars ($5,000,000) and not in excess of ninety percent (90%) of the amount which the Commissioner estimates will be the necessary current cost of the completed property or project, including the land; the proposed physical improvements; utilities within the boundaries of the property or project; architects' fees; taxes and interest accruing during construction; and other miscellaneous charges incidental to construction and approved by the Commissioner: *Provided,* That the principal obligation of the mortgage shall not in any event exceed ninety percent (90%) of the Commissioner's estimate of the replacement cost of the property or project on the basis of the costs prevailing on December 31, 1947, for properties or projects of comparable quality in the locality: *And provided further,* That such mortgage shall not in any event exceed the amount which the Commissioner estimates will be the cost of the completed physical improvements on the property or project, exclusive of off-site public utilities and streets, and organization and legal expenses. Such part of the mortgage as may be attributable to dwelling use shall not exceed $8,100 per family unit.
>
> * * * * *

§ 280.24 *Occupancy priority to veterans; no discrimination against children.* The mortgagor must establish, in a manner satisfactory to the Commissioner, that after completion of the project, preference or priority of opportunity to occupy will be given to veterans of World War II and their immediate families, except that this requirement does not apply to hardship cases as defined by the Commissioner and approved by him. The mortgagor must certify under oath that in selecting tenants for the property covered by the mortgage the mortgagor will not discriminate against any family by reason of the fact that there are children in the family, and that the mortgagor will not sell the property while the mortgage insurance is in effect unless the purchaser also so certifies, such certifications to be filed with the Commissioner. (The act provides that violation of any such certification shall be a misdemeanor punishable by a fine of not to exceed $500.)

* * * * *

§ 280.26 *Requirements regarding form of mortgagor.* In addition to meeting the requirements set forth in §§ 280.23 to 280.25, inclusive, the mortgagor must be:

(a) A corporation or trust formed or created, with the approval of the Commissioner, for the purpose of providing housing for rent or sale, and possessing powers necessary therefor and incidental thereto, which corporation, or trust, until the termination of all obligations of the Commissioner under such insurance, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structures, and methods of operation to such an extent as may be deemed advisable by the Commissioner. Such regulation or restriction shall remain in effect until such time as the mortgage insurance contract terminates without obligation upon the Commissioner to

issue debentures as a result of such termination. So long as such contract of insurance is in effect, the corporation or trust shall engage in no business other than the construction and operation of a rental housing project or projects; or

(b) A Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or a limited dividend corporation formed under and restricted by Federal or State housing laws as to rents, charges, and methods of operation; or

(c) If the mortgage is not in excess of $200,000, the mortgagor may be an individual.

* * * * *

§ 280.29 *Regulation of mortgagor by Commissioner in general.* A corporate mortgagor shall be regulated through the ownership by the Commissioner of certain shares of special stock (or other evidence of beneficial interest in the mortgagor) which stock or interest will acquire majority voting rights in the event of default under the mortgage or violation of provisions of the charter of the mortgagor or the violation of any valid agreement entered into between the mortgagor, the mortgagee and/or the Commissioner, but only for a period co-extensive with the duration of such default or violation. The shares of stock or beneficial interest issued to the Commissioner, his nominee or nominees and/or the Federal Housing Administration shall be in sufficient amount to constitute under the laws of the particular State a valid special class of stock or interest and shall be issued in consideration of the payment by the Commissioner of not exceeding in the aggregate $100. Such stock shall be represented by certificates issued in the name of the Commissioner, and/or in the name of his nominee or nominees, and/or in the name of the Federal Housing Administration, as the Commissioner shall require. Upon the termination of all obli-

gations of the Commissioner under his contract of mortgage insurance or any succeeding contract or agreement covering the mortgage obligation, including the obligation upon the Commissioner to issue debentures as a result of such termination, all regulation and restriction of the mortgagor shall cease. When the right of the Commissioner to regulate or restrict the mortgagor shall so terminate, the shares of special stock or other evidence of beneficial interest shall be surrendered by the Commissioner upon reimbursement of his payments therefor plus accrued dividends, if any, thereon. Such regulation and the additional regulation or restriction provided in §§ 280.30 to 280.32, inclusive, shall be made effective by incorporation of appropriate provisions therefor in the charter or other instrument under which the mortgagor is created, or by agreement. In all cases where the insured mortgage is in excess of $200,000, the mortgagor must be a corporation or trust. In the case of an individual mortgagor, regulation by the Commissioner may be exercised through a regulatory agreement in form and content satisfactory to the Commissioner.

§ 280.30 *Required supervision of mortgagor.* The following are the items which will be regulated or restricted in the manner and to the extent hereinbefore indicated:

(a) No charge shall be made by the mortgagor for the accommodations offered by the project in excess of a rental schedule to be filed with the Commissioner and approved by him or his duly constituted representative prior to the opening of the project for rental, which schedule shall be based upon a maximum average rental fixed prior to the insurance of the mortgage, and shall not thereafter be changed except upon application of the mortgagor to, and the written approval of the change by, the Commissioner.

(b) The established maximum rental shall be the maximum authorized charge against any tenant for the accommodations offered and shall include all services except telephone, gas, electric, and refrigeration facilities. Charges permitted in addition to such maximum rental shall be subject to the approval of the Commissioner.

* * * * *

(f) The mortgagor shall furnish at the request of the Commissioner, his employees or attorneys, specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, condition of the property and the status of the insured mortgage and any other information with respect to the mortgagor or its property which may reasonably be required. The above enumeration of specific items shall not be deemed in any manner to limit the generality of the preceding sentence. In case the mortgagor is in default under the insured mortgage, its regulatory agreement or charter, or has failed to meet any of the applicable requirements of this section or is in default with respect to any agreement between the mortgagor and the mortgagee or under any contract for the improvement of the mortgaged premises or under any agreement to which the Federal Housing Commissioner is a party, or in case an inspection shows that the property is not being managed or maintained in a manner satisfactory to the Commissioner, the Commissioner may require the mortgagor to furnish at the expense of the latter a complete audit of its books of account duly certified by a public accountant satisfactory to the Commissioner.

* * * * *

§ 280.34 *Development of property.* At the time the mortgage is insured the mortgagor shall have constructed and completed or shall be obligated to construct and complete new housing accommodations on the mortgaged

property designed principally for residential use, conforming to standards satisfactory to the Commissioner, and consisting of not less than eight (8) rentable dwelling units on one site and may be detached, semidetached, or row houses, or multifamily structures.

* * * * *

§ 280.41 *Effective date.* This part is effective as to all mortgages on which a commitment to insure under section 608 is issued, on or after December 19, 1947, pursuant to an application for mortgage insurance filed on or after said date.

APPENDIX C

Plaintiff's Exhibit Number 31, *Planning Rental Housing Projects* (Federal Housing Administration; Revised, September 1947):

[p. 2] Forword. The purpose of this book is to demonstrate for prospective applicants for mortgage insurance under the provisions of Section 207 of the National Housing Act and Section 608 of the revision to that Act, what, in the opinion of the Federal Housing Administration, are the desirable principles to be observed in the planning of the building or buildings of a rental project, and of its site. * * *

[p. 5] Before discussing the physical characteristics which are deemed desirable in rental housing projects and the planning methods by which they may be achieved, a word is in order as to the types of rental projects contemplated by the National Housing Act and preferred by the Federal Housing Administration.

The Administration interprets the word "housing" to mean dwelling quarters for families—quarters which offer complete facilities for family life. A large variety of project types is possible: groups of single-family dwellings, row or group houses, row flats, walk-up apartments, and elevator apartments. Depending upon circumstances, any of these may occur not far from business districts of a city, or in less densely populated areas, or in its suburban sections.

Projects are preferred that have the following qualities:

1. Location in a distinctly residential area, which promises to retain good character.

2. A type of living unit that will appeal to a long-term rather than a temporary occupant.

3. Income from dwellings adequate to assure the financial success of the project, with income from the rental of garages, stores, and other facilities only a minor factor.

4. Tenants whose prospective income and ability to pay rent is not largely or solely dependent on the success and continuity of a single industry in the community.

[p. 6] Rental housing projects in distinctly commercial areas, hotels, apartment hotels, dormitories, club buildings partly devoted to residential use, farm dwellings, or "company housing" or other housing dependent on a single industry, are not considered acceptable, as they lack these characteristics.

U. S. GOVERNMENT PRINTING OFFICE: 1939